

## BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: )

Opinion requested by )  
Assemblyman Robert C. Cline )No. 75-093  
October 23, 1975

BY THE COMMISSION: We have been asked the following question by Assemblyman Robert C. Cline:

Has a lobbyist who owns a male dog which is bred to a female dog owned by Assemblyman Cline conferred a reportable benefit on the Assemblyman?

In November 1974, Assemblyman Cline entered into a verbal contract with Mr. Leon Henry, a registered lobbyist. Pursuant to the terms of this verbal contract, a female Brittany Spaniel owned by Assemblyman Cline and his wife was bred with a male Brittany Spaniel owned by Mr. Henry during the period between November 13 and November 17, 1974. The two dogs were bred pursuant to a standard agreement under which the owner of the male dog has his pick of the litter as compensation for the services rendered by his dog. On January 18, 1975, the Clines' dog had seven puppies. Mr. Henry chose one puppy and the Clines kept one for themselves and sold the remaining five for \$100 apiece.

Is the foregoing transaction reportable by Mr. Henry on his lobbyist report?

## CONCLUSION

The transaction described is an exchange under Government Code Section 86107(d). However, the exchange occurred before the effective date of the Political Reform Act, notwithstanding the fact that the puppies were born after the effective date. Therefore, it is not necessary for Mr. Henry to include this particular transaction in his lobbyist report.

ANALYSIS

Assemblyman Cline is an elected state officer. Section 86107(d)<sup>1/</sup> requires every lobbyist to file periodic reports containing:

The name and official position of each elected state official ... with whom the lobbyist has engaged in an exchange of money, goods, services or anything of value and the nature and date of each such exchange and the monetary values exchanged.<sup>2/</sup>

The transaction between Assemblyman Cline and Mr. Henry was an exchange, but we conclude that the exchange occurred before the effective date of the Political Reform Act and Mr. Henry, therefore, is not required to report the exchange.<sup>3/</sup>

The effective date of the Political Reform Act was January 7, 1975. Section 81016. The first report filed by lobbyists pursuant to Section 86107 included exchanges occurring between January 7 and January 31, 1975. Section 86110.

Assemblyman Cline and Mr. Henry entered into their verbal contract in November, 1974. Pursuant to the agreement, Mr. Henry fully performed his obligations between November 13 and November 17, 1974, when the dogs were bred. Assemblyman Cline received consideration from Mr. Henry at that time. If the Assemblyman had paid a monetary stud fee, his obligation to pay that fee would have been incurred in November. Instead, the Assemblyman agreed to exchange a puppy in return for the stud services rendered by Mr. Henry's dog.

In these circumstances, the birth of the puppies was a condition precedent to performance by Assemblyman Cline, and Assemblyman Cline's duty to perform did not arise until after

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

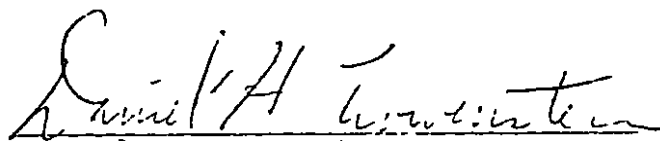
<sup>2/</sup> Section 86107(d) also applies to exchanges with legislative officials, agency officials, state candidates and members of the immediate families of such persons.

<sup>3/</sup> When Mr. Henry provided the services of his dog as a stud, he was not making a gift to an elected state officer prohibited by Section 86203. The agreement between Assemblyman Cline and Mr. Henry was a bargained-for exchange in which each party received valuable consideration. See Horton v. Kyburz, 53 C.2d 59 (1959).

the puppies were born.<sup>4/</sup> However, the mere fact that the condition precedent occurred after the effective date of the Political Reform Act does not mean that the exchange is subject to the reporting requirements of the Act.

We interpret the Political Reform Act to have prospective, not retroactive, effect. See Opinion requested by Atlantic-Richfield Company, 1 FPFC Opinions \_\_\_\_\_ (No. 75-078-A, October 23, 1975); Senator Donald L. Grunsky, 1 FPFC Opinions \_\_\_\_\_ (No. 75-115, October 23, 1975). In this case, the contract was negotiated before the effective date of the Act, the lobbyist fully performed his obligations under the contract, and the elective state official's performance occurred after January 7, 1975, only because he could not perform until the puppies were born. For purposes of reporting under Section 86107(d), this exchange is not reportable since it did not occur after the effective date of the Act.<sup>5/</sup>

Approved by the Commission on October 23, 1975.  
Concurring: Carpenter, Lowenstein and Miller. Dissenting:  
Brosnahan. Commissioner Waters was absent.

  
Daniel H. Lowenstein  
Chairman

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<sup>4/</sup> A condition precedent is an act which must be performed or an uncertain event which must happen before the promisor's duty of performance arises. Sosin v. Richardson, 210 C.A.2d 258, 264 (1962).

<sup>5/</sup> We need not reach the issue of exactly when this particular exchange did take place. For purposes of this opinion, it is only necessary to conclude that the exchange took place prior to the effective date of the Act.